

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte YING DING,
BRIAN HALSALL, and WILLIAM R. HEINEMAN

MAR 13 2007

U.S. PATENT AND TRADEMARK
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal 2006-0703
Application 09/268,437
Technology Center 1600

ON BRIEF

Before SCHEINER, GRIMES, and GREEN, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

REQUEST FOR REHEARING

Appellants request rehearing of the Board's decision mailed August 31, 2006.

First, appellants contend that the original Appeal Brief "contains all the discussion with respect to the rejection under 35 U.S.C. § 112," but that the panel failed to address the rejection (Request p.2).

Appellants' attention is directed page 3 of the Examiner's Answer, wherein the Examiner states that that the rejection of claims 1-5, 11, and 12

under 35 U.S.C. § 112, second paragraph, was withdrawn from consideration. Therefore, there was no rejection under 35 U.S.C. § 112 presented for review.

Second, appellants request reconsideration of the new grounds of rejection of claim 11 under 35 U.S.C. § 102(b) as being anticipated by Cozette (Request, pp. 1-2). Appellants assert that the dual analyte sensor for glucose and cholesterol taught at column 74 of Cozette does not anticipate claim 11, as the electrodes of the sensor are coated with glucose oxidase and cholesterol oxidase. *Id.* at 2. In use, if glucose and/or cholesterol are present in a test solution, an enzymatic reaction occurs. *Id.* According to appellants, binding of a substrate to an enzyme is not “binding of analyte” as that term would be understood by one of ordinary skill, as binding is usually considered to be a reversible event. *Id.*

Appellants argue that the specification distinguishes a binding substrate from a reactant. *Id.* at 3. Appellants point to page 6 of the specification, which lists the compounds that can use analyte binding sites, asserting that the list makes “clear that the analyte binding sites are molecules that simply bind the complementary analyte molecule.” *Id.* Cholesterol oxidase and glucose oxidase, appellants assert, are listed as labels, and thus do not fall within the definition of specific analyte binding substance.

Appellants’ arguments are not convincing, and we find that the electrodes coated with glucose oxidase and cholesterol oxidase as taught by Cozette meets the limitation of analyte binding areas as used in claim 11.

First, as defined by the online Merriam-Webster Medical Dictionary,¹ an analyte is a chemical substance that is the subject of a chemical analysis. As set forth by Cozette, glucose and cholesterol read on the analytes, and the electrodes coated with glucose oxidase and cholesterol oxidase read on the plurality of analyte binding areas.

Moreover, the above interpretation is consistent with the specification. The specification teaches at page 6 (emphasis added):

The binding sites can be formed from any molecule which can be bound to a substrate and which will specifically bind to a desired analyte. Specific binding sites include ionophores, cofactors, polypeptides, proteins, glycoproteins, *enzymes*, immunoglobulins, antibodies, antigens, lectins, neurochemical receptors, oligonucleotides, polynucleotides, molecules of DNA, molecules of RNA, active fragments or subunits or single strands of the preceding molecules, specific binding polymers and mixtures thereof. Obviously the analytes will be specifically complementing compounds.

Thus, contrary to the assertions of appellants, the specification clearly contemplated the use of enzymes as the complementary molecule in the analyte binding areas. We therefore find no point of law or fact which we overlooked or misapprehended in arriving at our decision.

¹ <http://www.merriam-webster.com/cgi-bin/mwmednlm?book=Medical&va=analyte>, printed March 7, 2007, attached.

REHEARING DENIED

Zori R. Schinner

Toni R. Scheiner
Administrative Patent Judge

E. J. S.)
) BOARD OF PATENT

Eric B. Grimes)
Administrative Patent Judge) APPEALS AND

INTERFERENCES


Lora M. Green
Administrative Patent Judge

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